IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5905 OF 2006

Mr.Alphonso Menezes .. Petitioner.
Vs.
Ms.Stella Menezes & Ors. .. Respondents.

Mr.Anil Singh i/b S.R.Saudagar for the petitioner.
Mr.N.M.Shah for respondent no.4.

CORAM : D.B.BHOSALE, J.

DATED : 5TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent no.4.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Shah, learned counsel waives service for respondent no.4.

3. By this writ petition, the petitioner-defendant has impugned the order dated 17th July, 2006 passed by the trial Court dismissing his application seeking an amendment of the written statement. By way of amendment the petitioner sought to introduce three paragraphs, namely, paragraph nos. 6(a), 6(b) and 6(c), mentioned in the schedule of the amendment. The learned Judge while rejecting the application, in paragraph 5 of the impugned order, has

observed that the proposed amendment, as per paragraph nos.6(a) and 6(c) amount to withdrawal of the admissions given earlier in favour of the plaintiff. Mr.Singh, learned counsel for the petitioner states that he has instructions not to press the amendment of written statement as prayed for in paragraphs 6(a) and 6(c) of the schedule of amendment. I perused the proposed amendment in paragraph 6(b) of the schedule and the written statement filed by the petitioner. In my opinion, the amendment as prayed for in paragraph 6(b) of the schedule of amendment can be allowed and is necessary for the purpose of determining the questions in controvery between the parties. While considering whether particular amendment should or should not be allowed, the Court is not expected to go into correctness and falsity of the case in the amendment. The real controversy test is basic or cardinal test and it is primary duty of the court to decide whether such amendment is necessary to decide the dispute between the parties. In my opinion, no prejudice whatsoever would be caused to the respondent-plaintiff if the amendment as prayed for in paragraph 6(b) of the schedule is allowed. Moreover, no arguments were advanced on behalf of the plaintiff as to why the amendment prayed for in paragraph 6(b) also be not allowed. In the circumstances this petition is partly allowed. The

petitioner-defendants are allowed to carry out the amendment as per paragraph 6(b) of the schedule of the amendment within two weeks from today failing which the trial Court shall proceed with the case without amendment. The statement of Mr.Singh that he is not pressing this writ petition in respect of paragraph 6(a) and 6(c) of the schedule of the amendment is accepted. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)